



## Ohio Revised Code

### Section 1701.802 Merger converting wholly owned subsidiary into parent corporation.

Effective: October 12, 2006

Legislation: House Bill 301 - 126th General Assembly

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(A) For purposes of this section, a holding company is a domestic corporation that, from its formation until consummation of a merger governed by this section, was at all times a direct or indirect wholly owned subsidiary of the parent corporation and whose shares are issued in that merger solely to the shareholders of the parent corporation.

(B) Pursuant to an agreement of merger between the constituent corporations as provided in this section and provided that the provisions of Chapter 1704. of the Revised Code do not prevent the merger from being effected, a direct or indirect wholly owned domestic subsidiary may be merged with or into a domestic parent corporation if all of the following apply:

- (1) The parent company and the direct or indirect wholly owned subsidiary are the only constituent entities to the merger.
- (2) Each share or fraction of a share of the outstanding shares of the parent corporation outstanding immediately prior to the time at which the merger becomes effective is converted in the merger into a share or fraction of a share of a holding company having express terms identical in all material respects to those that were converted in the merger.
- (3) The articles and regulations of the holding company immediately following the time at which the merger becomes effective contain provisions identical in all material respects to those contained in the articles and regulations of the parent corporation immediately prior to the time at which the merger becomes effective.
- (4) As a result of the merger, the parent corporation becomes a direct or indirect wholly owned subsidiary of the holding company.
- (5) The directors of the parent corporation become or remain the directors of the holding company



immediately following the time at which the merger becomes effective.

(C) A parent corporation, by action of its board of directors, may adopt a merger described in division (B) of this section without any vote of its shareholders. From and after the effective time of a merger adopted in this manner, all of the following apply:

(1) To the extent the restrictions of Chapter 1704. of the Revised Code applied to the parent corporation and its shareholders at the effective time of the merger, such restrictions apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the parent corporation. All shares of stock of the holding company acquired in the merger, for purposes of Chapter 1704. of the Revised Code, are deemed to have been acquired at the time that the shares of stock of the parent corporation converted in the merger were acquired, and any shareholder that immediately prior to the effective time of the merger was not an interested shareholder of the parent corporation within the meaning of Chapter 1704. of the Revised Code does not solely by reason of the merger become an interested shareholder of the holding company.

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the parent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the parent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the parent corporation.

(3) To the extent a shareholder of the parent corporation immediately prior to the time at which the merger became effective had standing to institute or maintain litigation by or in the right of the parent corporation, nothing in this section shall be deemed to limit or extinguish such standing.

(D) If the agreement of merger is adopted pursuant to division (C) of this section, the secretary or assistant secretary of the parent corporation shall certify on the agreement that the agreement has been adopted pursuant to this section and that the conditions specified in division (B) of this section have been satisfied.

(E) The agreement of merger shall set forth the designation and the number of the outstanding shares of each class of the subsidiary constituent corporation and the number of shares of each such class



owned by the surviving corporation. It also shall set forth any statements and matters that are required, and may set forth any provision that is permitted, in a merger under section 1701.78 of the Revised Code.

(F)(1) Except as otherwise provided in division (F)(2) of this section, within twenty days after the approval of the agreement of merger by the directors of each domestic constituent corporation, the surviving corporation shall deliver or send notice of such approval and a copy or summary of the agreement to each shareholder of each domestic constituent corporation, other than the surviving corporation, of record as of the date on which the directors of the surviving corporation approved the agreement. The notice and copy or summary shall be delivered or sent by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent.

(2) Any corporation that files periodic reports with the United States securities and exchange commission pursuant to section 13 of the "Securities Exchange Act of 1934," 116 Stat. 787, 15 U.S.C. 78m, as amended, or section 15(d) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o(d), as amended, may satisfy the notice requirement of division (F)(1) of this section by including a copy of the agreement of merger in a report filed in accordance with those provisions within twenty days after the approval of the agreement of merger by the directors of the corporation.

(G) The approval of the agreement of merger by the directors of a domestic constituent corporation under this section constitutes adoption by that corporation.